

November 22, 2021

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

Re: Notice of Ex Parte Presentation

WC Docket No. 17-84, *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*

WC Docket No. 19-126, *Rural Digital Opportunity Fund*

Dear Ms. Dortch:

Maureen O'Connell of Charter Communications, Inc. ("Charter") and Luke Platzer of Jenner & Block LLP met on November 18, 2021 via teleconference with Adam Copeland, Associate Bureau Chief, Wireline Competition Bureau; Pamela Arluk, Chief, Competition Policy Division, Wireline Competition Bureau; Liz Drogula, Special Counsel to the Competition Policy Division, Wireline Competition Bureau; Michael Ray, Attorney with the Competition Policy Division, Wireline Competition Bureau; Michael Nemcik, Attorney with the Competition Policy Division, Wireline Competition Bureau; and Michael Janson, Director, Rural Broadband Auctions Task Force, to discuss the above-referenced proceedings.

During the meeting, Charter discussed challenges to deployment that broadband providers are facing—in particular, obtaining access to poles on reasonable timelines, terms and conditions—and which have the potential to delay broadband deployment in unserved areas, including for projects supported by the Rural Digital Opportunity Fund ("RDOF"). Timely and non-discriminatory access to utility poles is *critical* to broadband providers' ability to provide high-speed internet access to millions of unserved Americans across the country as quickly as possible, particularly those living in rural areas. As the pandemic continues to affect nearly every aspect of daily life, these families continue to struggle, without the ability to work, learn, or access healthcare from home.

Charter identified recent examples of challenges it had encountered in obtaining reasonable and timely poles access. These include a situation with Warren Rural Electric Cooperative Corporation ("WRECC"), an electric cooperative that operates as a Tennessee Valley Authority ("TVA") local power company in Kentucky. As part of its RDOF investment, Charter will extend its network to reach 6,055 unserved homes and small businesses to connect a significant percentage

of the nearly 37,000 residents still waiting for access to broadband in the WRECC service areas of Butler, Ohio, Simpson, and Warren counties. These areas are particularly in need: nearly 73% of the population of Butler County and 53% of the population of Ohio County have no access to high-speed internet at speeds of at least 25/3 Mbps, according to the FCC's 14th Annual Broadband Deployment Report, released earlier this year.

Charter and its predecessors operated for decades under an agreement with WRECC for pole attachment requests that did not limit the number of attachments WRECC would process each month, and despite Charter having a current, operating pole attachment agreement, WRECC insists that Charter sign a new pole agreement before it will process any applications. The new agreement also would unreasonably and arbitrarily limit the number of pole attachment applications it would process, which would prevent Charter from meeting its RDOF timelines. Unless action is taken to protect consumers in rural Kentucky, at the permit processing rate currently proposed by WRECC, it would take 14 years to complete the permitting process for attachments to poles to reach these locations—about *seven times* longer than planned and double the maximum allowed to *deploy* these federal taxpayer dollars under RDOF. That means a child in kindergarten now will have graduated from high school before the *permitting* phase is complete.

These RDOF buildouts are crucial for unserved families in Kentucky, which is why Charter prioritized these communities in its RDOF network buildout and had planned for construction to be largely complete to these 6,000 homes and small businesses by year-end 2023 but for delays from WRECC. Charter is sensitive to the significant influx of federal deployment subsidy dollars and its potential to overwhelm some smaller pole owners, which is why Charter recently retained multiple established and well-respected firms to perform this engineering work at WRECC's direction—all at Charter's expense—so the pole attachment process can be completed as safely and quickly as possible and construction can begin. These firms already work with several electric co-ops across Kentucky. Thus far, WRECC has not accepted this offer of assistance.

Charter also identified an instance in Hawaii in which a pole owner had insisted on unreasonable conditions contrary to FCC rules to enter into a pole attachment agreement, as well as instances in California and South Carolina in which pole owners had either changed their engineering standards, or applied unreasonable requirements unrelated to safety, that would unnecessarily increase the number of pole replacements required to complete projects. Charter also expressed concern that some pole owners have competitive incentives to delay broadband deployment by attaching entities because they are themselves affiliated with broadband providers who are putative competitors to the attaching entities, including (in the case of WRECC) affiliates or business partners receiving RDOF support.

Charter discussed the July 16, 2020 Petition for a Declaratory Ruling filed by NCTA – The Internet & Television Association (“NCTA Petition”) regarding (1) the allocation of costs for pole replacements, and (2) making wider use of the Commission's accelerated docket to address pole access disputes in unserved areas.¹ Charter emphasized the continued importance of the issues raised by the NCTA Petition, and noted that action by the Commission could both assist with broadband deployment efforts directly (with respect to FCC-regulated pole owners) and indirectly

¹ NCTA, *Petition for Expedited Declaratory Ruling*, WC Docket No. 17-84 (filed July 16, 2020), <https://www.fcc.gov/ecfs/filing/107161552527661>.

(because many state regulators and statutes incorporate or look to the Commission's rules in setting their own pole attachment standards). Charter urged the Commission to move forward to address these issues.

Please direct any questions regarding the foregoing to the undersigned.

Respectfully submitted,

/s/ Maureen O'Connell

Maureen O'Connell

Vice President

Regulatory Affairs

cc: Meeting participants